

**STATE OF SOUTH CAROLINA  
COUNTY OF RICHLAND**

**BEFORE THE CHIEF PROCUREMENT  
OFFICER FOR CONSTRUCTION**

**IN THE MATTER OF:**

**DISMISSAL**

**RICHARDSON CONSTRUCTION, INC.**

**CASE NO. 2015-005**

**v.**

**GITI TIRE MANUFACTURING, (USA) LTD  
AND ALLIANCE CONSULTING  
ENGINEERS, INC.**

**SITE PREPARATION FOR GITI TIRE  
MANUFACTURING, (USA) LTD**

**POSTING DATE: 12/2/14**

On November 11, 2014, the Chief Procurement Officer for Construction (CPOC) received a letter from Mr. R. Bryan Barnes, attorney for Richardson Construction, Inc. (Richardson). Mr. Barnes addressed the letter to Clarissa Belton, procurement officer with the South Carolina Department of Commerce (Commerce); and the CPOC. Enclosed with the letter was a document purporting to be Richardson's protest, captioned "Before the South Carolina Commerce Department." [Ex. A] In it Richardson protests a solicitation by Giti Tire Manufacturing, (USA) Ltd. (Giti). Giti plans to construct and operate a tire manufacturing facility in Chester County. In its solicitation for site work services, Giti seeks to prequalify bidders and allow only the top five ranked firms to bid the project. [Ex. A, p. 2; July 7, 2014, South Carolina Business Opportunities advertisement [Ex. B] Richardson requests a decision from Commerce and seeks "all relief available to an aggrieved party under the South Carolina Consolidated Procurement Code [Code]." Its protest also states:

The [Code] clearly contemplates that a purchasing agency and a procurement officer will be involved with state procurements subject to the [Code] and will perform various delineated functions....Neither a purchasing agency nor a procurement officer has been present in any way in the bidding of this Project. Giti is a private company utilizing a private engineering firm, Gresham Smith, and one of Giti's own employees, Clyde Smith, to run the procurement for the mass site work for the Project.

On November 17, 2014, Mr. Barnes sent a second letter to Ms. Belton, the CPOC, and representatives from Giti and Chester County. [Ex. C] This letter recites "Richardson filed protests with the Chester County Purchasing Department, the State Engineer's Office, and the South Carolina Department of Commerce for the Project on Wednesday, November 12, 2014." On November 18, 2014, Ms. Karen Blair Manning, general counsel for Commerce, wrote the CPOC requesting a dismissal of

Richardson's protest for lack of jurisdiction. [Ex. D] Ms. Manning's letter pointed out that "[n]either Chester County nor Giti Tire is a 'governmental body' within the meaning of S.C. Code Section 11-35-310(18)." On November 20, 2014, Richardson responded to Commerce's request arguing that either the Code or Chester County's purchasing policy applies to the solicitation for site preparation services. [Ex. E] For the reasons set forth below, the CPOC is without jurisdiction to address this matter.

### **RELEVANT FACTS**

1. On or about June 5, 2014, the South Carolina Coordinating Council for Economic Development (Council) awarded a grant to Chester County for \$35,775,000<sup>1</sup> with the stipulation that Chester County use these funds for "land acquisition and real property improvements for Giti." [Ex. F]

2. Chester County, Giti, and the Council subsequently entered into a "Performance Agreement" whereby Giti agreed to build manufacturing facilities and create a specified number of jobs in exchange for the use of the grant funds to assist in the acquisition and improvement of real property on which Giti would locate its manufacturing facilities. [Ex. G] The Performance Agreement obligated Giti to

establish and equip tire manufacturing plants and support operations of a corporate facility, a research and development facility and a distribution facility through the acquisition, construction and purchase of certain land, buildings, furnishings, apparatuses and equipment in the County, hereinafter referred to as the "Project."

3. On July 7, 2014, Giti solicited bids for site preparation by placing an advertisement in South Carolina Business Opportunities. [Ex. B] The solicitation provided for the prequalification of bidders.

### **DISCUSSION**

The Consolidated Procurement Code

applies to every procurement or expenditure of funds by this State under contract acting through a governmental body as herein defined irrespective of the source of the funds, including federal assistance monies, except as specified in Section 11-35-40(3) (Compliance with Federal Requirements) and except that this code does not apply to gifts, to the issuance of grants, or to contracts between public procurement units, except as provided in Article 19 (Intergovernmental Relations).

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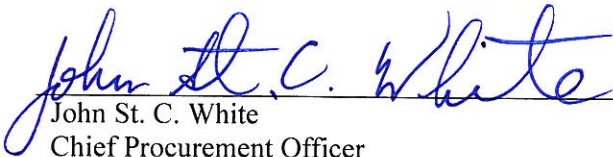
<sup>1</sup> This amount was subsequently increased by Addendum to \$36,325,000.

S.C. Code Ann. § 11-35-40(2) (2011). The Code defines “procurement” as the acquisition of supplies, services, information technology, or construction. S.C. Code Ann. § 11-35-310(24). In other words, absent an acquisition of construction by the State under contract acting through a governmental body, the Code is inapplicable to Giti’s solicitation of site preparation work.

In this case, Giti, not the State, purchased the real property. Giti, not the State, will own and operate the facility once the project is complete. Giti, not the State, will contract for the construction work that Richardson wants to bid. Giti, not the State, conducted the solicitation Richardson protested. By Richardson’s own acknowledgment, “Giti is a private company utilizing a private engineering firm...and one of Giti’s own employees...to run the procurement for the mass site work for the Project.” The State is acquiring nothing, and no governmental body is paying a contractor for construction work.

#### **DETERMINATION**

For the forgoing reasons, the CPOC is without jurisdiction over Richardson’s protest. The protest is therefore dismissed.

  
John St. C. White  
Chief Procurement Officer  
For Construction

Columbia, South Carolina

**STATEMENT OF RIGHT TO FURTHER ADMINISTRATIVE REVIEW**  
*Protest Appeal Notice (Revised October 2014)*

The South Carolina Procurement Code, in Section 11-35-4210, subsection 6, states:

(6) Finality of Decision. A decision pursuant to subsection (4) is final and conclusive, unless fraudulent or unless a person adversely affected by the decision requests a further administrative review by the Procurement Review Panel pursuant to Section 11-35-4410(1) within ten days of posting of the decision in accordance with subsection (5). The request for review must be directed to the appropriate chief procurement officer, who shall forward the request to the panel or to the Procurement Review Panel, and must be in writing, setting forth the reasons for disagreement with the decision of the appropriate chief procurement officer. The person also may request a hearing before the Procurement Review Panel. The appropriate chief procurement officer and an affected governmental body shall have the opportunity to participate fully in a later review or appeal, administrative or judicial.

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Copies of the Panel's decisions and other additional information regarding the protest process is available on the internet at the following web site: <http://procurement.sc.gov>

FILE BY CLOSE OF BUSINESS: Appeals must be filed by 5:00 PM, the close of business. *Protest of Palmetto Unilect, LLC*, Case No. 2004-6 (dismissing as untimely an appeal emailed prior to 5:00 PM but not received until after 5:00 PM); *Appeal of Pee Dee Regional Transportation Services, et al.*, Case No. 2007-1 (dismissing as untimely an appeal faxed to the CPO at 6:59 PM).

FILING FEE: Pursuant to Proviso 108.1 of the 2014 General Appropriations Act, "[r]equests for administrative review before the South Carolina Procurement Review Panel shall be accompanied by a filing fee of two hundred and fifty dollars (\$250.00), payable to the SC Procurement Review Panel. The panel is authorized to charge the party requesting an administrative review under the South Carolina Code Sections 11-35-4210(6), 11-35-4220(5), 11-35-4230(6) and/or 11-35-4410... Withdrawal of an appeal will result in the filing fee being forfeited to the panel. If a party desiring to file an appeal is unable to pay the filing fee because of financial hardship, the party shall submit a completed Request for Filing Fee Waiver form at the same time the request for review is filed. The Request for Filing Fee Waiver form is attached to this Decision. If the filing fee is not waived, the party must pay the filing fee within fifteen days of the date of receipt of the order denying waiver of the filing fee. Requests for administrative review will not be accepted unless accompanied by the filing fee or a completed Request for Filing Fee Waiver form at the time of filing." PLEASE MAKE YOUR CHECK PAYABLE TO THE "SC PROCUREMENT REVIEW PANEL."

LEGAL REPRESENTATION: In order to prosecute an appeal before the Panel, business entities organized and registered as corporations, limited liability companies, and limited partnerships must be represented by a lawyer. Failure to obtain counsel will result in dismissal of your appeal. *Protest of Lighting Services*, Case No. 2002-10 (Proc. Rev. Panel Nov. 6, 2002) and *Protest of The Kardon Corporation*, Case No. 2002-13 (Proc. Rev. Panel Jan. 31, 2003); and *Protest of PC&C Enterprises, LLC*, Case No. 2012-1 (Proc. Rev. Panel April 2, 2012). However, individuals and those operating as an individual doing business under a trade name may proceed without counsel, if desired.



**South Carolina Procurement Review Panel  
Request for Filing Fee Waiver  
1105 Pendleton Street, Suite 202, Columbia, SC 29201**

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\_\_\_\_\_  
Name of Requestor

\_\_\_\_\_  
Address

\_\_\_\_\_  
City

\_\_\_\_\_  
State

\_\_\_\_\_  
Zip

\_\_\_\_\_  
Business Phone

- 
1. What is your/your company's monthly income? \_\_\_\_\_
  2. What are your/your company's monthly expenses? \_\_\_\_\_
  3. List any other circumstances which you think affect your/your company's ability to pay the filing fee:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

To the best of my knowledge, the information above is true and accurate. I have made no attempt to misrepresent my/my company's financial condition. I hereby request that the filing fee for requesting administrative review be waived.

Sworn to before me this

\_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_

\_\_\_\_\_  
Notary Public of South Carolina

\_\_\_\_\_  
Requestor/Appellant

My Commission expires: \_\_\_\_\_

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For official use only: \_\_\_\_\_ Fee Waived \_\_\_\_\_ Waiver Denied

\_\_\_\_\_  
Chairman or Vice Chairman, SC Procurement Review Panel

This \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_  
Columbia, South Carolina

**NOTE: If your filing fee request is denied, you will be expected to pay the filing fee within fifteen (15) days of the date of receipt of the order denying the waiver.**

## EXHIBIT A

STATE OF SOUTH CAROLINA

BEFORE THE SOUTH CAROLINA  
COMMERCE DEPARTMENT

IN THE MATTER OF PROTEST OF  
RICHARDSON CONSTRUCTION, INC.

### PROTEST

YOU WILL PLEASE TAKE NOTICE that Richardson Construction, Inc. ("Richardson") protests the decision of Giti Tire Manufacturing, (USA) Ltd. ("Giti") and Gresham Smith and Partners ("Gresham Smith") to prevent Richardson from bidding on the mass site work project for the construction of the Giti tire plant in Chester County, South Carolina ("Project"). Richardson seeks all relief available to an aggrieved party under the South Carolina Consolidated Procurement Code ("SCCPC").

### FACTS

Giti decided to build a tire manufacturing plant in Chester County due in part to incentives it received. One of the incentives is reported to be a \$37,800,000.00 award from the South Carolina Commerce Department to Chester County for the purpose of incentivizing Giti to build its plant in South Carolina. The plant is reputed to cost approximately \$540,000,000.00 to build.

On July 2, 2014, Alliance Consulting Engineers, Inc. (“Alliance”),<sup>1</sup> acting on behalf of GiTi, published an advertisement in SCBO seeking Contractor’s Prequalification Statements for the provision of mass site work services for the Project. *See* Ex. 1. Richardson timely submitted a Contractor’s Prequalification Statement. *See* Ex. 2. Gresham Smith, the new Project Engineer, and Mr. Clyde Fish, Giti’s Director of Projects and Manufacturing, evaluated the Prequalification Statements submitted. Although they did not find that Richardson failed to meet the published minimum prequalifications, they denied Richardson the opportunity to submit a bid. Giti and Gresham Smith chose to solicit bids from only the top five ranked firms when the firms that submitted prequalification statements were ranked from most to least qualified based on a point system. Richardson meets the published minimum qualifications, but, because it was ranked eighth when using the point system, it has not been permitted to bid. *See* Ex. 3.

Richardson received notice of Giti’s decision on October 30, 2014. This protest is timely filed. The owner’s representative for Giti apparently believes that Giti is acting within constraints imposed by the Commerce Department that require Giti to follow the SCCPC for the procurement of the mass site work for the Project.<sup>2</sup> Therefore, this protest is being lodged with the State Engineer and the Commerce Department out of an abundance of caution. Upon information and belief, the bid packages were released November 10, 2014, but no bids have yet been received by Giti. Consequently, Giti is not prejudiced by this appeal.

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<sup>1</sup> After publishing the advertisement in SCBO, Alliance was replaced by Gresham Smith as the Project Engineer.

<sup>2</sup> Richardson submitted a Freedom of Information Act (“FOIA”) request to Chester County on October 31, 2014, seeking documents evidencing the transfer and use of public funds for the Project. That request has thus far gone unanswered. Therefore, Richardson cannot at this time confirm whether the Project is indeed subject to the requirements of SCCPC. Richardson explicitly reserves the right to argue that the Project is a private project not subject to the requirements of the SCCPC at a later date based upon documents received in response to the FOIA request.

Richardson urges the Commerce Department to consider this matter quickly and to promptly render a decision that the procurement of the mass site work for the Project violated the requirements of the SCCPC.

### **ARGUMENT**

If the Project is indeed subject to the SCCPC, the process that has been implemented for the procurement of the mass site work violates the requirements of the SCCPC. The procurement process is so flawed that it must be abandoned and restarted in order to comply with the requirements of the SCCPC. The “process” (if it can be called a process) that was followed was a patchwork of ideas that seem to have been pulled from a multitude of outdated forms, model policies, and almost anywhere other than the SCCPC. If the procurement is governed by the SCCPC, Richardson must be permitted to submit a bid.

#### **I. If the SCCPC Applies, the Procurement Process for the Mass Site Work Violates the SCCPC and Must be Redone in Compliance with the SCCPC**

The procedures instituted in connection with the bidding for the mass site work of the Project blatantly violate the requirements of the SCCPC in numerous ways. Accordingly, the entire bidding process must be restarted and conducted in compliance with the requirements of the SCCPC if the Project is governed by the SCCPC.

##### *A. The Context for State Procurement is Lacking*

The SCCPC clearly contemplates that a purchasing agency and a procurement officer will be involved with state procurements subject to the SCCPC and will perform various delineated functions. *See, e.g.*, §11-35-310(26) (defining “purchasing agency”); §11-35-310(25) (defining “procurement officer”); §11-35-5220 (outlining the duties of chief procurement officers); §11-35-1520(7) (requiring the procurement officer or purchasing agency to issue a written determination regarding the propriety of a correction or withdrawal of a bid). Neither a

purchasing agency nor a procurement officer has been present in any way in the bidding of this Project. Giti is a private company utilizing a private engineering firm, Gresham Smith, and one of Giti's own employees, Clyde Smith, to run the procurement for the mass site work for the Project. If this Project is subject to the SCCPC, a purchasing agency and procurement officer must be appropriately involved in the procurement process.

*B. The Necessary Written Determinations Have Not Been Made*

Section 11-35-3010 of the SCCPC requires the relevant governmental body involved in a procurement to "state in writing the facts and considerations leading to the selection" of the project delivery method employed for a procurement. §11-35-3010(1); *see also* S.C. Reg.19-445.2145. The governmental body must then "submit its written report stating the facts and considerations leading to the selection of the particular project delivery method to the State Engineer's Office for its review." §11-35-3010(2). No governmental body has been involved in the procurement for this Project, and, consequently, no written determination regarding the selection of the project delivery method has been made or submitted to the State Engineer's Office for review.

Section 11-35-3023 states that the "prequalification process may be used only with the approval and supervision of the State Engineer's Office." §11-35-3023(A). Furthermore, the prequalification can only be used for a design-bid-build project if the State Engineer determines that the construction at issue is "unique in nature, over ten million dollars in value, or involves special circumstances." §11-35-3023(B). The State Engineer did not determine that the mass site work for the Project is unique, over ten million dollars in value, or involves circumstances, and the State Engineer has not approved or supervised the prequalification process for the mass site work procurement.

*C. The Advertisement Process was Badly Flawed*

Giti began the procurement process for the mass site work for the Project by advertising a request for qualifications. *See* Ex. 1. The advertisement itself was flawed in material ways and fails to comply with the requirements of the SCCPC.

First, the advertisement stated that the contract would not require payment or performance bonds. *See* Ex. 1. The SCCPC requires payment and performance bonds on projects of this magnitude. §11-35-3030(2). The SCCPC also requires a bid bond. §11-35-3030(1). The advertisement stated that no bid bond was required. *See* Ex. 1.

Second, the advertisement stated that the bid opening will not be public. *See* Ex. 1. The SCCPC requires bid openings of this type to be public. §11-35-1520(5).

Third, the advertisement stated that bidders will be short listed. *See* Ex. 1. Short-listing qualified businesses and limiting the number that can submit bids is prohibited for this type of project. §11-35-3023(B).

Finally, the advertisement stated that contractors must have completed five projects within the past five years, with at least one of those projects having an Earthwork value of \$2,500,000 or more. *See* Ex.1. The SCCPC requires an advertised request for qualifications to list the criteria that will be used to evaluate the responding contractors, and such criteria must include, among other things, recent past references and financial stability. §11-35-3023(A). The advertisement failed to list recent past references and financial stability as factors to be considered for prequalification.

Because the advertisement was flawed in so many ways, the process must be set aside and conducted in compliance with the requirements of the SCCPC if the SCCPC in fact applies.

*D. Richardson Was Improperly Denied the Opportunity to Bid*



As set forth more fully below, this Project is a design-bid-build project, and all qualified businesses must be permitted to submit a bid in a design-bid-build procurement. §11-35-3023(B). Even though Richardson satisfies the requirements listed in the advertisement for the request for qualifications, and even though Giti did not determine that Richardson was unqualified, Richardson was denied the opportunity to submit a bid. The determination to deny Richardson the ability to submit a bid directly violates §11-35-3023(B) of the SCCPC.

## **II. If the SCCPC Applies, Richardson Must Be Permitted to Submit a Bid**

If the Project is subject to the SCCPC, the decision to deny Richardson the opportunity to provide a bid for the Project violates the SCCPC.

Section 11-35-3023(A) of the SCCPC allows a governmental body to issue a request for qualifications and limit participation in the bidding for a project through a prequalification process. §11-35-3023(A). Section 11-35-3023(B) states that, in a design-bid-build procurement, “offers must be sought from **all** businesses that meet the published minimum requirements for prequalification.” §11-35-3023(B) (emphasis added). For purposes of the SCCPC, a design-bid-build project is one for which the “governmental body sequentially awards separate contracts, the first for architectural and engineering services to design an infrastructure facility and the second for construction of the infrastructure facility according to the design.” §11-35-2910(6). Thus, the SCCPC requires that all businesses meeting the minimum prequalification requirements for a design-bid-build project be permitted to submit bids.

The statute is clarified by Regulation 19-445.2132: “The pre-qualification process shall not be used to unduly limit competition . . . . In a competitive bid, the pre-qualification process is not intended to eliminate bidders capable of completing the work being procured . . . .” S.C. Reg. 19-445.2132(A).

The prequalification process was utilized for the bidding of the site preparation work for this Project, and Richardson timely submitted a completed Contractor Prequalification Statement on July 18, 2014. This Project is a design-bid-build project since the engineer was retained first to provide design services, and bids are now being solicited for construction services based on the design. Therefore, if this Project is subject to the SCCPC, bids must be sought from *all* businesses meeting the published minimum prequalification requirements pursuant to S.C. Code §11-35-3023(B) and Reg. 19-445.2132.

Richardson met the published prequalification requirements but was told that it could not submit a bid because it was not ranked high enough based on a point system used to rank the firms that submitted prequalification statements. The decision to solicit bids from only the top five ranked firms that were prequalified and eliminate the remaining prequalified firms for bidding directly violates S.C. Code §11-35-3023(B) and Reg. 19-445.2132. Since this is a design-bid-build project, all prequalified firms must be allowed to submit bids. Accordingly, Richardson must be allowed to submit a bid pursuant to the requirements of the SCCPC.

Respectfully submitted,

ROGERS TOWNSEND & THOMAS, PC



R. Bryan Barnes (S.C. Bar No.: 007818)  
Mary Lucille Dinkins (S.C. Bar No.: 101177)  
220 Executive Center Drive (29210)  
Post Office Box 100200  
Columbia, South Carolina 29202-3200  
Tel: (803) 771-7900; Fax: (803) 343-7017  
[bryan.barnes@rtt-law.com](mailto:bryan.barnes@rtt-law.com)  
[lucy.dinkins@rtt-law.com](mailto:lucy.dinkins@rtt-law.com)

***ATTORNEYS FOR RICHARDSON  
CONSTRUCTION INC.***

November 11, 2014  
Columbia, South Carolina

**Bidding Documents/Plans May Be Obtained From:**

<http://www.clemson.edu/facilities/capital-projects/projects/index.html>

**Plan Deposit:** None

**Note:** Only those bidding documents / plans obtained from the aforementioned source are official. Bidders rely on copies of bidding documents / plans obtained from any other source at their own risk.

**Pre-Bid Conf.:** Not mandatory

**Pre-Bid Date/Time:** 7/17/14 – 2:00 pm

**Place:** Gentry Hall, 191 Old Greenville Hwy., Clemson, SC 29634-5952

**Agency/Owner:** Clemson University

**Agency Procurement Officer:** Bret McCarty, PE

**Address:** University Facilities, Klugh Avenue, Clemson, SC 29634

**E-mail:** [bmccart@clemson.edu](mailto:bmccart@clemson.edu)

**Telephone:** (864) 643-6173

**Fax:** (864) 656-0793

**Bid Closing Date/Time:** 7/31/14 – 2:00 pm

**Place:** Gentry Hall, 191 Old Greenville Hwy., Clemson, SC

**Hand Deliver/Mail Bids To:** Clemson University, Attn.: Pat Crowther, Capital Projects, Gentry Hall, 191 Old Greenville Hwy., Clemson, SC 29634-5952

**REQUEST FOR QUALIFICATIONS**

**Project Name:** DESIGN-BUILD SERVICES FOR CHEROKEE SCHOOLS

**Project Number:** RFQ 2013-2014-01

**Project Locations:** Cherokee County School District – Gaffney & Blacksburg, SC

**Description of Project:** Cherokee County School District invites firms capable of performing Design-Build Services to submit a letter of interest & qualifications. The purpose of this RFQ is to identify design-builders qualified to provide services for a pending building program that includes replacement schools, additions / renovations to existing schools & miscellaneous improvements & is pending funding availability.

The general scope of work is to provide assistance to the owner in identifying projects for the program & design-build services during the planning & construction phases of the program. Experience in design-build projects for K-12 educational facilities is essential

**Solicitation Can Be Found At:**

<http://www.cherokee1.k12.sc.us>

**Deadline for Submittals:** Thursday, 7/24/14 – 3:00 pm, local time

**Number of Copies:** 10

**Agency/Owner:** Cherokee County School District

**Name & Title of Agency Coordinator:** Brock Heron, Director of Finance

**Address:** 141 Twin Lake Rd., Gaffney, SC 29340

**Telephone:** (864) 206-2224

**E-mail:** [brock.heron@cherokee1.org](mailto:brock.heron@cherokee1.org)

**Project Name:** LANCASTER COUNTY 2014 ROADSIDE BRUSH CONTROL

**Project Number:** 1104-7

**Bid Bond/Security Required:** Yes, 5%

**Performance Bond Required:** Yes, 100%

**Payment Bond Required:** Yes, 100%

**DBE Participation:** Encouraged at 5% or greater

**Description of Project:** Treat all brush areas along rights-of-way on County roads as designated by Lancaster County Department of Public Works

**Agency/Owner:** Lancaster County, 101 North Main St., Lancaster, SC 29720

**Engineer:** Infrastructure Consulting & Engineering

**Engineer Contact:** Bill Coleman, Project Manager

**Engineer Address:** 1021 Briargate Circle, Columbia, SC 29210

**Engineer Telephone:** (803) 822-0333 office & (803) 261-5581 cell

**Engineer Fax:** (803) 822-0034

**Engineer E-mail:**

[bill.coleman@ice-eng.com](mailto:bill.coleman@ice-eng.com)

**Questions:** All questions, requests & correspondence shall be addressed to the project manager, Bill Coleman. All questions concerning the bid documents shall be in writing & submitted by 7/18/14

**Plans on File At:** AGC & Lancaster County Procurement Office & Infrastructure Consulting & Engineering in Columbia

**Plans & Bidding Documents May Be Obtained From:** The engineer at 1021 Briargate Circle, Columbia, SC 29210, or from the Lancaster County web site

**Plan Deposit:** Bid documents may be obtained as a hard copy or electronic copy – with no charge for electronic copy & \$100.00 for hard copy

**Pre-Bid Conf.:** There will be no pre-bid conference. All questions & answers will be sent to all known plan holders

**Bid Closing & Opening:** 7/23/14 – 10:00 am

**Bid Submittal:** Submit sealed bids clearly marked "RFB 1104-7" with the bidder's name, address & South Carolina contractor's license number on the envelope to Lancaster County Procurement, Attn.: Bryant Cook, County Administra-

tive Building, First Floor, 101 North Main St., Lancaster, SC 29720

**Substantial Completion:** 10/31/14

**Project Name:** A.D.A.-COMPLIANT AUTOMATIC DOOR / STOREFRONT AT CAYCE-WEST COLUMBIA & BATESBURG BRANCH LIBRARIES

**Project Number:** B15008 – 07/31/14S

**Bid Closing Date/Time:** 7/31/14 – 3:00 pm, ET

**Agency/Owner:** Lexington County Procurement Office, County Administration Building, 212 South Lake Dr., Ste. 503, Lexington, SC 29072

**Direct Inquiries To:** Angela M. Seymour

**Telephone:** (803) 785-8319

**E-mail:** [aseymour@lex-co.com](mailto:aseymour@lex-co.com)

**Download Solicitation From:** [Click here](#)

**Project Name:** SITE PREPARATION FOR GITI TIRE MANUFACTURING, (USA) LTD.

**Project Number:** 14134-0012. This project is being funded by County & State grants

**Project Location:** I-77 Mega Site on the west side of I-77 between Exits 62 & 65 in Chester County

**Bid Security Required:** No

**Performance Bond Required:** No

**Payment Bond Required:** No

**Description of Project:** Contractor's

Prequalification Statement to be submitted to Alliance Consulting Engineers, Inc., no later than July 24, 2014, at 4:00 pm. Short list to be selected & Invitation for Bids issued on August 1, 2014. Bids due to Alliance Consulting Engineers, Inc., on August 24, 2014, at 4:00 pm. Commence construction in September 2014. Complete building pad preparation by December 2014.

**Related Experience:** Must have completed five projects within the last five years as a contractor, with at least one having an earthwork value of \$2,500,000 or more. Based on the Contractor Prequalification Statements, GITI Tire Manufacturing will select up to five contractors for the invitation to bid on the site preparation for the project

**Scope of Work:** The scope of work includes construction of up to 3.6 million square feet of building pad to rough subgrade elevations, loop road, storm drainage basins with associated piping & structures, & erosion & sediment control



**Architect/Engineer:** Alliance Consulting Engineers, Inc.  
**A/E Address:** PO Box 8147, Columbia, SC 29202

**A/E Telephone:** (803) 779-2078

**A/E Fax:** (803) 779-2079

**How Plans May Be Obtained:** Contractor Prequalification Packages will be available on July 7, 2014, from Alliance Consulting Engineers. Completed Statement of Qualifications (SOQ) must be submitted to Alliance Consulting Engineer's office no later than 4:00 pm on July 24, 2014. All questions should be submitted in writing with reference to Site Preparation for GiTi Tire Manufacturing (USA), Ltd., in the subject line no later than July 17, 2014, at 5:00 pm.

**Plan Deposit:** N/A

**Pre-Bid Conf./Site Visit:** None

**SOQ Opening Date/Time:** Not to be publicly opened

**Agency/Owner:** GiTi Tire Manufacturing (USA), Ltd.

**Address:** PO Box 8147, Columbia, SC 29202 or 1201 Main St., Ste. 2000, Columbia, SC 29201

**Telephone:** (803) 779-2078

**Fax:** (803) 779-2079

**Hand Deliver SOQ To:** 1201 Main St., Ste. 2020, Columbia, SC 29201

**Mail SOQ / Also Via FedEx or UPS To:** 1201 Main St., Ste. 2020, Columbia, SC 29201

#### ROOF REPAIRS FOR FINLAY PARK RESTAURANT

The City of Columbia is requesting bids from qualified vendors for the following: Finlay Park Restaurant & Museum at the FD Headquarters Roof Repairs."

**Information Can Be Viewed** using the City of Columbia's Bid Online System at <https://bidonline.columbia.sc.gov>

**Bid Number:** 001-14-15.

**Bid Deadline:** 7/18/14 – 3:00 pm, ET.

**A Mandatory Pre-Bid Meeting** will be held on July 9, 2014, at 10:00 am, ET, at 1136 Washington St., Columbia, SC 29201.

**The Deadline for Questions** will be July 10, 2014, by 12:00 pm, ET, & must be submitted using Bid on Line.

#### DEMETRE PARK PIER EXPANSION FOR CITY OF CHARLESTON

**The City Of Charleston Will Be Accepting Bids** for the expansion of the existing Pierhead at Demetre Park in accordance with

the procedures outlined in the Instruction to Bidders.

**Project:** CP0410C2 Demetre Park Pier Expansion.

**Description Of Project:** Project consists of the expansion of the existing Pierhead by approximately 360 sq. ft. at the Demetre Park Fishing Pier.

**Location:** Demetre Park, 640 Wampler Drive, Charleston, SC 29412.

**Qualifications Of Bidder:** Contractors must have a minimum of 10 years' experience in similar type projects. Bidders are required to have a current SC General Contractors License – Marine Classification (MR) certified by the South Carolina Contractors' Licensing Board (LLR).

**Construction Cost Range:** \$30,000 to \$50,000

**Bid Security, Performance & Payment Bonds** are required.

**A/E Name:** JMT, Inc.

**Address:** 1 Poston Road, Suite 230, Charleston, SC 29407

**A/E Contact:** Shannon Boyd

**Phone:** (843) 556-2624

**Fax:** (843) 556-2624

**E-Mail:** [sboyd@jmt.com](mailto:sboyd@jmt.com)

**Plans May Be Obtained From:** A&E Digital Printing, 517 King St., Charleston, SC 29403, (843) 853.5066 or A&E Digital Printing Planwell Public Plan Room, [www.anedigital.com](http://www.anedigital.com) – Plans will be available on or after Tuesday 8th at cost.

**Plans Available For Review At:** City of Charleston, Dept. of Parks, Capital Projects, 823 Meeting St., 2nd Floor, Charleston SC 29403.

**Pre-Bid Conference:** Mandatory

**Pre-Bid Conference Date/Time:** 10:00am, Tuesday July 22, 2014, on site

**Location:** Demetre Park, 640 Wampler Dr., Charleston SC 29412

**Bid Opening Date:** 2:00pm, Thursday, August 7, 2014, at Department of Parks

**Bid Delivery Address:** City of Charleston, Dept. of Parks, Capital Projects, 823 Meeting St., 2nd Floor, Charleston SC 29403

**Project Manager:** Ross Eastwood, (843) 579-7552, Fax (843) 724-7300, [EastwoodR@charleston-sc.gov](mailto:EastwoodR@charleston-sc.gov)

#### GARDENDALE PHASE I WALKING TRAIL, TEGA CAY, SC

Electronic bids will be publicly opened at 2:00pm., Tuesday, August 12, 2014, in Rm. 332C, at the SCDOT Headquarters Building, 955 Park St., Columbia, SC, for the Walking Trail Project in Tega Cay, SC from S-741 (Gardendale Road) to S-251

(Gray Rock Road) in York County. The project consists of clearing, grading, asphalt trail paving, boardwalks, culverts, sidewalk, ramps & crosswalks on Gardendale Road.

**Details For The Contracts Are Now Available** on the SCDOT website, [Click Here](#). The project is listed under File Number 46.041084R1. Electronic bidding files & proposals will be available on the Bid Express website, [Click Here](#). Plans & proposals also will be available on July 15, 2014, in the Engineering Publications Customer Service Center, Room G-19, SCDOT Headquarters Building, 955 Park Street, Columbia, South Carolina 29201, or call (803) 737-4533 to order.

#### IMPROVEMENTS AT PEE DEE REGIONAL AIRPORT

**Sealed Bids, in Duplicate**, for the Installation of a New Airfield Guidance Signage System; the Installation of New Medium Intensity Lighting (MITL) Systems on Taxiways B, B3 & D; & the Installation of a New Airfield Standby Generator, FAA A.I.P. Project No. 3-45-0023-32B-2014 will be received by the Pee Dee Regional Airport District in the office of the Airport Director, located in the Airport Terminal Building, Florence Regional Airport, 2100 Terminal Drive, Florence, SC 29506, until 2:00pm, on July 29, 2014, at which time & place all bids received will be opened & read aloud.

**The Work Will Be Completed & Ready For Final Payment** within 240 calendar days from the date that the contract time commences to run.

**The Complete Examination & Understanding** of the Instruction to Bidders, bid form, bid bond, bidder's qualification questionnaire, DBE letter of intent, schedule of unit prices, agreement, performance & payment bonds, general provisions, supplementary general provisions, specifications, plans, & the site of the construction are necessary in order for the bidder to properly submit a bid.

**A Pre-Bid Conference Will Be Conducted** at 11:00am, on July 23, 2014, in the Conference Room of the Pee Dee Regional Airport District located in the Airport Terminal Building at the Florence Regional Airport. Attendance at this conference by prospective bidders is mandatory. Bidders must attend this conference in order to qualify to submit a bid.

**Complete Sets of Bidding Documents** in PDF electronic format may be obtained from the office of Pearson Engineering, PO Box 1354, Irmo, SC 29063-1354, (803) 791-5981, at a cost of fifty dollars (\$50.00) per set. This cost is non-

ROGERS TOWNSEND & THOMAS, PC  
POST OFFICE BOX 100200 (29202)  
220 EXECUTIVE CENTER DRIVE  
COLUMBIA, SOUTH CAROLINA 29210  
P 803.771.7900 F 803.343.7013  
W RTT-LAW.COM

R. BRYAN BARNES, ESQUIRE  
SHAREHOLDER  
BRYAN.BARNES@RTT-LAW.COM  
P 803.744.1273

EXHIBIT C



ROGERS TOWNSEND  
ATTORNEYS AT LAW

2015-005

November 17, 2014



NOV 18 2014

OFFICE OF STATE ENGINEER

VIA EMAIL AND CERTIFIED MAIL

Clarissa R. Belton, Procurement Officer  
South Carolina Commerce Department  
1201 Main St., Suite 1600  
Columbia, SC 29201-3200

Clyde A. Fish  
Director of Projects and Manufacturing  
Giti Tire Manufacturing (USA) Ltd.  
Fort Mill, SC 29708

Office of State Engineer  
Chief Procurement Officer for Construction  
Procurement Services  
1201 Main St., Suite 600  
Columbia, SC 29201

Susan M. Cok  
Director of Contracts and Procurement  
Chester County Purchasing Department  
1476 JA Cochran Bypass  
Chester, SC 29706

Re: In re Protest of Richardson Construction, Inc. Protest of Giti Tire Plant Site Work

Dear Ms. Belton, Ms. Cok, Mr. Fish, and the Chief Procurement Officer for Construction at the State Engineer's Office:

I am writing regarding the bid protests filed by Richardson Construction Company ("Richardson") for the procurement of mass site work services to construct the Giti tire plant in Chester County, South Carolina ("Project"). Richardson filed protests with the Chester County Purchasing Department, the State Engineer's Office, and the South Carolina Department of Commerce for the Project on Wednesday, November 12, 2014. Richardson also filed a protest with Giti Tire and Gresham Smith and Partners, as agents of Chester County or the State of South Carolina for the Project, on Thursday, November 13, 2014.

Nearly \$40 million of public funds is being used for the Project. Publicly available information reveals that the government funds used for the Project originated with the State and were then transferred or handled in some way by Chester County before being distributed to Giti. It is therefore apparent to Richardson that the Project is subject to either the South



Carolina Consolidated Procurement Code (“Code”) or the Chester County Purchasing Policy and Procedure Manual (“Policy”). Richardson filed protests with the Chester County Purchasing Department, the State Engineer’s Office, the Commerce Department, Giti, and Gresham Smith because, despite having submitted multiple FOIA requests seeking documents evidencing the transfer and use of public funds for the Project, Richardson has still not received any such documents. Therefore, Richardson is unable to confirm which set of governmental procurement rules governs the Project: the Chester County Policy or the South Carolina Code. Because Richardson has not received the documents it needs (and requested) to confirm which governmental procurement rules apply to the Project, Richardson had to file its protests with all potentially relevant agencies in order to protect its rights in this time-sensitive matter.

All recipients of Richardson’s protest have an obligation to stay the procurement of mass site work services for the Project pending a resolution of Richardson’s protest. S.C. Code Ann. §11-35-4210(7) provides that “[i]n the event of a timely protest . . . the State shall not proceed further with the solicitation or award of the contract until ten days after a decision is posted by the appropriate chief procurement officer.” S.C. CODE. ANN. §11-35-4210(7). If this Project is subject to the South Carolina Code, the procurement of mass site work services for the Project must be stayed pending resolution of Richardson’s timely protest pursuant to the plain language of §11-35-4210(7) of the Code.

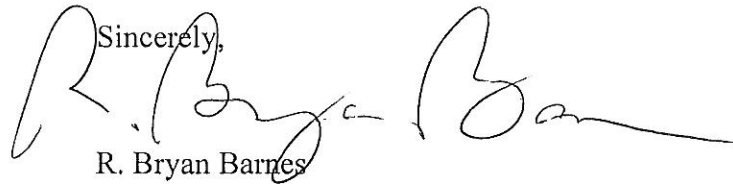
Likewise, the procurement of the Project must be stayed if the Project is subject to the Chester County Policy. The Chester County Policy grants prospective bidders aggrieved in connection with the solicitation of a contract the right to submit a protest. Chester County Purchasing Policy, PP-040, at III.G. Implicit and incidental to the right to submit a protest is the right to have the procurement at issue stayed pending resolution of a timely protest. The right to protest would be purely illusory if procurement and construction could proceed prior to a resolution of the protest. Thus, the procurement of mass site work services for the Project must be stayed pending resolution of Richardson’s protest pursuant to both the South Carolina Code and the Chester County Policy, regardless of whether the procurement is being handled and administered directly by the County, the State, or Giti/Gresham Smith acting as agents for the County or State. Failure to stay this procurement will deny Richardson its rights under the Chester County Policy and the South Carolina Code and will result in great prejudice to Richardson.

In conclusion, I ask that you immediately stay the procurement of mass site work services for the Project.

November 17, 2014

Page 3

Sincerely,

A handwritten signature in black ink, appearing to read "R. Bryan Barnes". The signature is fluid and cursive, with a long horizontal stroke at the end.

R. Bryan Barnes

cc: Stephen Brown, PE  
George Dillard  
William Wood  
Joseph Richardson

## EXHIBIT D

Nikki R. Haley  
Governor

**SOUTH CAROLINA**  
DEPARTMENT OF COMMERCE  
November 18, 2014

Robert M. Hitt III  
Secretary

**BY HAND DELIVERY**

Office of State Engineer  
Chief Procurement Officer for Construction  
Procurement Services  
1201 Main St., Suite 600  
Columbia, SC 29201

NOV 18 2014  
OFFICE OF STATE ENGINEER

RE: In re Protest of Richardson Construction, Inc. Protest of Giti Tire Plant Site Work

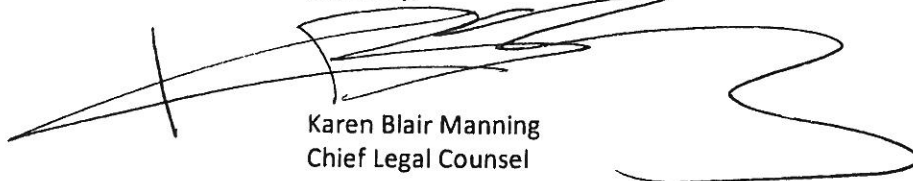
Dear State Engineer:

Enclosed are copies of a protest dated November 11, 2014 by Richardson Construction, Inc. and related correspondence dated November 17, 2014 regarding the procurement by Chester County and Giti Tire of mass site work services associated with the construction of Giti's new tire plant in that county. Richardson Construction filed the protest with the Office of the State Engineer and the South Carolina Department of Commerce. Both entities also received the correspondence requesting that the contract award in this procurement be stayed pending resolution of the protest filed by Richardson Construction.

The purpose of this letter is to request that the State Engineer expedite the dismissal of the Richardson Construction protest for lack of jurisdiction. The state funds at issue in the protest are proceeds of an economic development grant awarded to Chester County to offset costs associated with a proposed Giti Tire plant. Pursuant to the grant-related agreements, Chester County, with the support of Giti Tire, has followed Chester County's procurement rules in the procurement of services associated with construction of the Giti Tire plant. Neither Chester County nor Giti Tire is a "governmental body" within the meaning of S.C. Code Section 11-35-310(18). Accordingly, the protest filed with the Office of the State Engineer should be dismissed for lack of jurisdiction.

An expedited decision by the State Engineer will assist in clearing the path forward for this significant economic development project.

Sincerely,



Karen Blair Manning  
Chief Legal Counsel

Enclosures

Cc: Clarissa R. Belton

## EXHIBIT E

STATE OF SOUTH CAROLINA

BEFORE THE SOUTH CAROLINA  
COMMERCE DEPARTMENT

IN THE MATTER OF PROTEST OF  
RICHARDSON CONSTRUCTION, INC.

### SUPPLEMENT TO PROTEST

YOU WILL PLEASE TAKE NOTICE that Richardson Construction Company, Inc. ("Richardson") hereby submits this supplement to the protest it filed with the South Carolina Department of Commerce and the State Engineer's Office (collectively the "State") on November 12, 2014. Richardson protests the decision of Giti Tire Manufacturing, (USA) Ltd. ("Giti") and Gresham Smith and Partners ("Gresham Smith") preventing Richardson from bidding on the mass site work project for the construction of the Giti tire plant in Chester County, South Carolina ("Project"). Richardson incorporates by reference the protest it filed with the State on November 12, 2014, and seeks all relief available to an aggrieved party under the South Carolina Consolidated Procurement Code ("Code").

### FACTS

Richardson filed a protest in this matter with both the State and the Chester County Chief Procurement Officer on November 12, 2014. Richardson filed a protest with both the State and Chester County because, as of November 12, 2014, Richardson had not received documents in response to Freedom of Information Act ("FOIA") requests it submitted to both Chester County and the South Carolina Department of Commerce seeking documents evidencing the transfer and

use of public funds for the Project. Although it was apparent to Richardson that the Project is subject to governmental procurement rules since nearly \$40 million of public funds are being used for the Project, Richardson could not confirm whether the Project is subject to the Chester County procurement policy (“Policy”) or the Code without reviewing the documents showing the transfer and use of public funds for the Project. At the time that Richardson filed its protest, it was unable to review such documents due to the fact that neither Chester County nor the Department of Commerce had responded to Richardson’s FOIA request. Richardson could not wait to file a protest until it received responses to its FOIA requests due to the strict time constraints for submitting a protest. Therefore, Richardson submitted a protest to both Chester County and the State in order to adequately protect its rights based on the information (and lack of information) available at the time.

On November 18, 2014, Richardson received documents from the Department of Commerce in response to its FOIA request to the Department.<sup>1</sup> The documents received from the Department of Commerce are attached hereto as Exhibit 4. These documents shed more light on the use of public funds for the Project and reveal what appears to be a contradiction between the Code and the funding documents.

## **ANALYSIS**

The “Grant Award Agreement” for the Project provides that the selection of contractors for the Project “must follow applicable procurement laws, regulations and guidelines.” Ex. 4, “Grant Award Agreement,” at Section 8. The Performance Agreement among Chester County, Giti, and the South Carolina Coordinating Council for Economic Development (“Council”) regarding the use of public funds for the Project states that the selection of contractors for the

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<sup>1</sup> Richardson has still not received documents in response to its October 31, 2014, FOIA request to Chester County seeking documents evidencing the transfer and use of public funds for the Project, nor has it received any assurance from the County that it will in fact be provided with such documents.

Project “must take place in accordance with the Chester County procurement ordinance.” Ex. 4, “Performance Agreement,” ¶5.0. Thus, the documents governing the award of public funds for the Project provide that the Project is subject to the Chester County Policy.

The Grant Award Agreement specifies with great detail the purpose for which the subject public funds are to be used. Ex. 4, Grant Award Agreement, Section 2. Section 2 of the Grant Award Agreement states that the “[f]unds will be used for land acquisition and real property improvements for Giti Tire Holdings (USA) Ltd (Project Summer), which will invest \$560 million and create 1,700 new jobs.” Section 3 further provides that the public funds awarded under the agreement are to be used “only for the Project,” and Section 6 requires any surplus funds to be returned to the Council. *Id.* at §§3, 6. Thus, the Grant Award Agreement makes it clear that the public funds being awarded for the Project may only be used for expenses related to land acquisition and real property improvements for the construction of the Giti plant in Chester County. Likewise, Paragraph 3.0 of the Performance Agreement provides that the funds will be used “to assist the Company [Giti] with the costs of site acquisition, site preparation, site infrastructure improvements and other related capital expenditures for real property improvements at the Project site in Chester County.” Ex. 4, “Performance Agreement,” ¶3.0. The Grant Award Agreement and the Performance Agreement both reveal that the public funds available for the Project are provided *only* to assist with the costs of site acquisition, site preparation, and infrastructure improvements for the Project.

Section 11-35-40(2) of the Code provides that the Code “applies to every procurement or expenditure of funds by this State under contract acting through a governmental body . . . except that this code does not apply to . . . the issuance of grants.” S.C. CODE. ANN. §11-35-40(2). A “grant” is defined by the Code as “the furnishing by the State or the United States government of



assistance, whether financial or otherwise, to a person to support a program authorized by law.” §11-35-310(19). The Code further provides that the definition of a grant “does not include an award, the primary purpose of which is to procure specified end products, whether in the form of supplies, services, information technology, or construction. A contract resulting from such an award must not be considered a grant but a procurement contract.” *Id.* Thus, the Code does not apply to grants, but it does apply to awards. As defined in §11-35-310(19), the distinction between a grant and an award under the Code is the specificity of the purpose for which the funds are given. Funds given to generally support a program authorized by law constitute a grant, whereas funds given for the purpose of procuring a specified end product constitute an award.

The degree of specificity indicated for the use of public funds for the Project, as outlined in the Grant Award Agreement and the Performance Agreement, reveal that the issuance of public funds for this Project constitutes an award, not a grant. The funds are available only for purposes of procuring a specified end product - the acquisition and preparation of the site for the construction of the Giti tire plant in Chester County. Because the public funds at issue here constitute an award under the Code, the Project is subject to the requirements of the Code pursuant to §11-35-40(2) of the Code.<sup>2</sup> The Performance Agreement, however, states that the Project is subject to the Chester County Policy, not the Code. There does not appear to be any authority in the Code that allows a governmental body such as the Council to exempt a particular procurement from the requirements of the Code when the procurement would otherwise be

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<sup>2</sup> None of the exemptions from the Code outlined in §11-35-710 apply to this Project.

subject to the Code. Therefore, there is tension between the Code and the Performance Agreement, and the Performance Agreement appears to contradict the Code.<sup>3</sup>

Respectfully submitted,

ROGERS TOWNSEND & THOMAS, PC

*Mary Dinkins*

---

R. Bryan Barnes (S.C. Bar No.: 007818)  
Mary Lucille Dinkins (S.C. Bar No.: 101177)  
220 Executive Center Drive (29210)  
Post Office Box 100200  
Columbia, South Carolina 29202-3200  
Tel: (803) 771-7900; Fax: (803) 343-7017  
[bryan.barnes@rtt-law.com](mailto:bryan.barnes@rtt-law.com)  
[lucy.dinkins@rtt-law.com](mailto:lucy.dinkins@rtt-law.com)  
**ATTORNEYS FOR RICHARDSON  
CONSTRUCTION INC.**

November 20, 2014  
Columbia, South Carolina

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<sup>3</sup> As mentioned above, Richardson has not yet received a response to its October 31, 2014, FOIA request to Chester County seeking documents evidencing the use of public funds for the Project. Therefore, this analysis is based solely upon the information known to Richardson at this time and could change in the event that additional documents are provided.

**SOUTH CAROLINA COORDINATING COUNCIL  
FOR ECONOMIC DEVELOPMENT  
1201 Main Street, Suite 1600  
Columbia, South Carolina 29201**

**GRANT AWARD AGREEMENT**

In accordance with the provisions of Section 12-28-2910 of the Code of Laws of South Carolina, 1976, as amended (the "Code"), the South Carolina Coordinating Council for Economic Development, hereinafter called the Council, does commit and grant to Chester County, hereinafter called the Grantee, the sum in dollars set forth in Section 3 below for the Project identified in Section 2 below. The acceptance of the Agreement creates a contract between the Council and the Grantee, legally binding the Grantee to carry out the activities and obligations set forth in the Application and this Agreement, all in accordance with the terms and conditions set forth in this Agreement and in any appendices attached hereto and any other documents or conditions referred to herein.

**Section 1: DEFINITIONS:**

- (a) Agreement means this Grant Award Agreement.
- (b) Application means the grant application forms submitted by the Grantee to the Council.
- (c) Company means the economic development corporate entity that is identified in the Application.
- (d) Contractor means a private contractor who undertakes all or part of the Project.
- (e) Council means the South Carolina Coordinating Council for Economic Development (CCED).
- (f) Grant means the dollars committed by the Council to the Grantee for the Project.
- (g) Grantee means the unit of government designated for the Grant and set forth above.
- (h) Project means the project identified and described in the Application.
- (i) State means the State of South Carolina and any agencies or offices thereof.

**Section 2: PROJECT DESCRIPTION:** Funds will be used for land acquisition and real property improvements for Giti Tire Holdings (USA) Ltd (Project Summer), which will invest \$560 million and create 1,700 new jobs. This project has been approved by the Council and is included by reference as Coordinating Council Grant #C-14-2371 - Land Acquisition and Real Property Improvements.

**Section 3: AWARD AMOUNT:** The Council hereby commits an amount not to exceed \$35,775,000, to be used only for the Project and related costs, as described in the Application. Eligible costs that can be paid from the Grant shall include only those costs expressly set forth in the Application.

**3.1: Approval of Third Party Contracts:** The Grantee must submit all proposed agreements with third party contractors engaged to perform work within the scope of the Grant to the Council prior to finalizing those agreements.

**3.2: Notice to Proceed:** The Grantee must obtain from the Council written notice to proceed prior to incurring costs against the Grant. If the Grantee or the Company needs to incur expenses prior to the Council's notification to proceed, the Grantee must submit a written request to the Council and obtain prior written approval from the Council. Otherwise, any expenditure made prior to the date of the written notice to proceed is made by the Grantee or the Company at its own risk and expense and is not eligible for payment with Grant funds.

**3.3: Engineering Costs:** Reimbursement of engineering costs will be capped at 10% of the total grant award amount. Requests that exceed 10% must have substantial justification and require prior approval by the Council to be reimbursable.

**3.4. Administrative Fees:** The Grantee may not charge an administration fee in connection with the Grant.

**Section 4: AMENDMENTS:** Any changes in the scope of work of the Project, including change orders or cost increases, must be submitted in writing by the Grantee to the Council as a request for an award adjustment, and such request must clearly identify the need for the change or relief. Any adjustment granted by the Council shall be appended to this Agreement as an amendment.

**Section 5: PERFORMANCE:** By acceptance of this Grant, the Grantee warrants that it will complete or cause to be completed the Project as described in the approved Application, including any approved amendments appended hereto. Should Grantee fail to cause the completion of all or part of the Project, the Council shall be entitled to reimbursement from the Grantee of any Grant funds that were received by the Grantee for any work that was not performed.

**Section 6: FUNDING UNDERRUNS:** The Grantee agrees that it will return surplus Grant funds that result from project cost underruns.

**Section 7: AUDIT:** The Grantee must include an examination and accounting of the expenditures of Grant funds in its first annual audit following the completion of the Project, and submit a copy of the audit report to the Council. The Grantee agrees that it will reimburse the Council for unauthorized and unwarranted expenditures disclosed in the audit, if so directed by the Council. Upon request of the Council, the Grantee shall make available; and cause the Company to make available, for audit and inspection by the Council and its representatives all the books, records, files and other documents relating to any matters pertaining to the Project, the Application or this Agreement. The Grantee shall have prepared an audit of Grant funds received under this Agreement that adheres to the following audit requirements, whichever is applicable:

- (a) Generally accepted auditing standards established by the American Institute of Certified Public Accountants, (AICPA);

- (b) The General Accounting Office (GAO) Standards for Audits of Governmental Organizations, Programs, Activities, and Functions, latest revised edition (Yellow Book);

**Section 8: CONTRACTOR SELECTION:** If the Grantee desires to select a Contractor to undertake all or any part of the scope of work of the Project, then the selection of that Contractor by the Grantee must follow applicable procurement laws, regulations and guidelines. The Grantee warrants that it will adhere to all such applicable procurement laws, regulations and guidelines in the selection of the Contractor. In addition, the Grantee may not award contracts to any Contractors who are ineligible to receive contracts under any applicable laws or regulations of the State.

Upon request, the Grantee must make available to the Grantee's auditor, the Council, and its representatives, and the public Grantee's records and other documentation of the procurement process and any sole source justification. If the Grantee fails to adhere to procurement procedures required by law, the Council may call for repayment by the Grantee for Grant funds that were expended in a disallowable manner.

A Contractor must represent that it has, or will secure at its own expense, all personnel required in the performance of the services covered by this Agreement. Such personnel shall not be employees of, or have any contractual relationship with the Council or the Grantee.

All of the services required to complete the Project will be performed by the Grantee and/or a Contractor, or under its supervision, and all personnel engaged in the work shall be fully qualified and shall be authorized under state and local law to perform such services.

The Grantee and/or a Contractor shall be liable for and pay all taxes required by local, state, or federal governments, which may include, but not be limited to, social security, worker's compensation, and employment security as required by law. No employee benefits of any kind shall be paid by the Council to or for the benefit of the Grantee and/or a Contractor or his employee or agents by reason of this Agreement.

The Grantee warrants that it will enforce all terms and conditions of this Agreement upon the Company and any Contractors.

**Section 9: CONFIDENTIAL INFORMATION:** Any reports, information, data, or other documentation given to or prepared or assembled by the Grantee under this Agreement which the Council requests to be kept confidential shall not be made available to any individual or organization by the Grantee without the prior written approval of the Council.

**Section 10: DISCRIMINATION:** The Grantee shall not, and shall impose on its Contractors the obligation not to, discriminate against any employee or applicant for employment because of race, color, religion, age, sex, national origin, or handicap. The Grantee and any Contractor shall be required to take affirmative action to ensure that applicants for employment and employees are treated without regard to their race, color, religion, age, sex, national origin, or handicap.



**Section 11: INTEREST OF CERTAIN FEDERAL OR STATE OFFICIALS:** No elected or appointed State or federal official shall be admitted to any share or part of this Agreement or to any benefit to arise from the same.

**Section 12: INTEREST OF MEMBERS, OFFICERS OR EMPLOYEES OF THE GRANTEE, MEMBERS OF LOCAL GOVERNING BODY OR OTHER PUBLIC OFFICIALS:** No member, officer or employee of the Grantee, or its designees or agents, no member of the governing body of the locality in which the Project is situated, and no other public official of such locality or localities who exercises any functions or responsibilities with respect to the Project during his tenure or for one year thereafter, shall have any interest, direct or indirect, in any contract or subcontract, or the proceeds thereof, for work to be performed in connection with the Project or this Agreement. The Grantee shall incorporate, or cause to be incorporated, in all of its contracts or subcontracts relating to the Project and this Agreement this provision prohibiting such interest.

**Section 13: PROHIBITION AGAINST PAYMENTS OF BONUS OR COMMISSION:** The assistance and Grant funds provided under this Agreement shall not be used for the payment of any bonus or commission for the purpose of obtaining the Council's approval of the Application, or the Council's approval of any applications for additional assistance or Grant funds, or any other approval or concurrence of the Council required under this Agreement. However, the payment from Grant funds of reasonable fees for bona fide technical, consultant, managerial or other such services, other than actual solicitation, are not hereby prohibited if otherwise eligible as Project costs.

**Section 14: MAINTENANCE OF RECORDS:** The Grantee shall retain records for property purchased totally or partially with Grant funds for a period of three years after its final disposition. The Grantee shall maintain records relating to procurement matters for the period of time prescribed by applicable procurement laws, regulations and guidelines, but no less than three years. All other pertinent Grant and Project records including financial records, supporting documents, and statistical records shall be retained for a minimum of three years after notification in writing by the Council of the closure of the Grant. However, if any litigation, claim, or audit is initiated before the expiration of any such period, then records must be retained for three years after the litigation, claim, or audit is resolved.

**Section 15: MBE OBLIGATION:** The Grantee agrees to use its best efforts to ensure that minority business enterprises, as identified in Article 21, Sections 11-35-5210 through 11-35-5270 of the Code have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with funds provided under this Agreement. In this regard, the Grantee and its Contractors shall take all necessary and reasonable steps to ensure that minority business enterprises have the maximum opportunity to compete for and perform contracts

**Section 16: PROJECT COMPLETION:** The Grantee must complete, or cause to be completed, the portion of the Project to be funded in whole or in part with Grant funds within 18 months of the Date of Award of this Grant. Completion is defined as the final documentation by the Grantee to the Council of Grant funds expended and issuance by the Council of a notification in writing of the closure of the Grant. The Council may grant extensions to this completion period requirement at its discretion.

**Section 17: SANCTIONS:** If the Grantee fails or refuses at any time to comply with any of the terms and conditions of this Agreement, the Council may take, in addition to

any relief that it is entitled to at law, any or all of the following actions: require repayment of all or a portion of any Grant funds provided; cancel, terminate, or suspend, in whole or in part, the Grant and this Agreement; or refrain from extending any further assistance or Grant funds to the Grantee until such time as the Grantee is in full compliance with the terms and conditions of this Agreement.

**Section 18: APPLICABLE LAW:** This Agreement is made under and shall be construed in accordance with the laws of the State of South Carolina, without regard to conflicts of laws principles. The federal and state courts within the State of South Carolina shall have exclusive jurisdiction to adjudicate any disputes arising out of or in connection with this Agreement.

**Section 19: APPROPRIATIONS:** Notwithstanding any other provisions of this Agreement, the parties hereto agree that the Grant funds awarded hereunder are payable by appropriations from the State. In the event sufficient appropriations, grants, and monies are not made available to the Council to pay the compensation and expenses hereunder for any fiscal year, this Agreement shall terminate without further obligation of the Council. In such event, the Council shall certify to the Grantee the fact that sufficient funds have not been made available to the Council to meet the obligations of this Agreement; and such written certification shall be conclusive upon the parties.

**Section 20: COPYRIGHT:** No material produced in whole or in part under this Grant shall be subject to copyright in the United States or in any other country. The Council shall have the unrestricted authority to publish, disclose, distribute and otherwise use, in whole or in part, any reports, data or other materials prepared under this Grant.

**Section 21: TERMS AND CONDITIONS:** The Council reserves the right to add or delete terms and conditions of this Agreement as may be required by revisions and additions to changes in the requirements, regulations, and laws governing the Council and any other agency of the State.

**Section 22: REPORTING REQUIREMENTS:** The Grantee agrees to submit quarterly progress reports that provide a status update and identification of any material issues affecting the Project. Progress reports will be due on the first day of the month beginning with the first full month after commencement of the Project. Failure to submit progress reports will be subject to sanctions identified in Section 17 herein. The Grantee further agrees to complete and submit all quarterly progress reports and any other reports, in such form and according to such schedule, to the extent not specified herein, as may be required by the Council.

**Section 23: PROJECT START-UP:** The project must begin within three months of the Date of Award of the Grant. If the Grantee or the Company does not begin the Project within three months of the Date of Award of the Grant, the Council reserves the right to rescind the Grant, require the repayment of any Grant funds provided to Grantee and terminate this Agreement. For purposes of this section, Grantee or the Company shall have begun the Project once it has incurred material obligations in connection with the Project satisfactory to the Council to indicate that the Project will be timely completed.

**Section 24: LIABILITY:** The Grantee understands that Council accepts no liability for the Project nor any responsibility other than its agreement to provide the Grantee the Grant funds for the Project in the amount shown in Section 3, insofar as such funds are expended in accordance with the terms and conditions of this Agreement. During the

term of the Grant, the Grantee shall maintain tort liability insurance or shall have a self-funded and excess liability program with coverage amounts sufficient to meet the limits set forth under the SC Torts Claims Act in Section 15-78-120, as may be amended.

**Section 25: PAYMENT:** The Grantee must submit to the Council a certified request for payment for work that is documented by the Grantee. The Council, upon its approval of the request for payment, shall forward such requests to the Finance Department of the South Carolina Department of Commerce. Payments are issued from the Comptroller General's office. Payment requests should be submitted to the Council no more than once a month.

The Grantee will certify, to the best of its knowledge, information and belief, that the work on the Project for which reimbursement is requested has been completed in accordance with the terms and conditions of this Agreement, and that the payment request is due and payable from Grant funds.

All requests for payment must be certified as valid expenditures by an official representative of the Grantee. Invoices and canceled checks supporting the Grantee's request for reimbursement from Grant funds must be kept on file and be available for inspection at any time.

**Section 26: RESPONSIBILITY FOR MAINTENANCE:** Maintenance of new roads and other improvements to the Grantee's or Company's right of way and/or property is the sole responsibility of the Grantee. Neither the Council nor the State shall have any responsibility whatsoever to maintain such roads and other improvements relating to the Project. The Grantee may assign this responsibility to any agreeable party.

**Section 27: SEVERABILITY:** If any provision of this Agreement is or becomes illegal, invalid, or unenforceable in any respect, the legality, validity, and enforceability of the other provisions of this Agreement shall not in any way be affected or impaired thereby.

This Agreement shall become effective, as of the Date of Award, upon receipt of one copy of this Agreement which have been signed in the space provided below. The agreement must have original signatures and must be returned within fifteen days from the Date.

6-5-14  
Date of Award

Alan D. Young  
Alan D. Young  
Executive Director  
Coordinating Council for Economic Development

ACCEPTANCE FOR THE GRANTEE

R. Carlisle Roddey  
Signature of Official with Legal Authority  
to Execute this Agreement for the Grantee

7/01/14  
Date

R. CARLISLE RODDEY County Supervisor  
Typed Name and Title of Authorized Official

ATTEST:

[Signature]  
Signature of Elected City or County Council  
Member, as appropriate

[Signature]  
Signature of Elected City or County Council  
Member, as appropriate

Nikki R. Haley  
Governor

**SOUTH CAROLINA**  
DEPARTMENT OF COMMERCE

Robert M. Hitt III  
Secretary

## ADDENDUM TO ORIGINAL CONTRACT

Giti Tire Holdings (USA), Ltd. ~ #C-14-2371

CHESTER COUNTY

ORIGINAL CONTRACT AMOUNT  
APPROVED 06-05-14

\$35,775,000


ADDITIONAL FUNDING  
APPROVED 09-04-2014

\$550,000

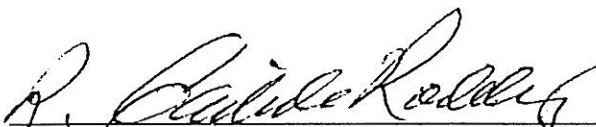
Funds will be used for additional costs anticipated for land acquisition, site preparation, infrastructure, and other real property improvements..

REVISED TOTAL CONTRACT AMOUNT

\$36,325,000

  
\_\_\_\_\_  
Alan D. Young  
Coordinating Council for Economic Development

9-4-14  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Signature of Official with Legal Authority  
to Execute this Agreement for the Grantee

9/19/14  
\_\_\_\_\_  
Date

ATTEST:

  
\_\_\_\_\_  
Signature of Elected City Official, as appropriate



**PERFORMANCE AGREEMENT  
(Governor's Closing Fund Assistance)  
C-14-2371**

This Performance Agreement ("Agreement") is made to be effective the 5<sup>th</sup> day of June, 2014, by and among Chester County, a political subdivision of the State of South Carolina and hereinafter referred to as the "Grantee," Giti Tire Holdings (USA) Ltd., hereinafter referred to as the "Company," and the South Carolina Coordinating Council for Economic Development, hereinafter referred to as the "Council."

WITNESETH

That for and in consideration of the mutual covenants and agreements herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the above parties do hereby agree as follows:

- 1.0 **Agreement.** The parties recognize that this Agreement is based on a Governor's Closing Fund ("GCF") grant award being awarded or made by the Council to the Grantee in an amount not to exceed Thirty Five Million Seven Hundred and Seventy Five Thousand and No/100 Dollars (\$35,775,000) (the "Grant") for the purposes identified in Section 3.0 herein.
- 2.0 **Project Description.** The Company will establish and equip tire manufacturing plants and support operations of a corporate facility, a research and development facility and a distribution facility through the acquisition, construction and purchase of certain land, buildings, furnishings, apparatuses and equipment in the County, hereinafter referred to as the "Project."
- 3.0 **Use of Proceeds.** The Grantee will use the Grant to assist the Company with the costs of site acquisition, site preparation, site infrastructure improvements and other related capital expenditures for real property improvements at the Project site in Chester County (collectively, "Grant Project"). To the extent that grant funds are disbursed under this Agreement such disbursed funds are, hereinafter referred to as the "Assistance." Any changes in the scope of the Grant Project, the costs of which are to be reimbursed through Grant funds must be submitted in writing by the Grantee to the Council as a request for an award adjustment, and such request must clearly identify the need for the change or relief. Any adjustment granted by the Council shall be appended to this Agreement as an amendment.
- 3.1 **Disbursement of Funds.** No funds will be disbursed until the approval of expenditures, through submission of invoices and proof of payment to the Grantee; provided, however, that funds will be disbursed within thirty (30) days from the date that invoices for eligible expenditures and sufficient proof of payment are delivered to the Grantee.
- 3.2 **Third Party Contracts.** The Company must submit all agreements with third party contractors engaged to perform work within the scope of the Grant to the

Council prior to or simultaneously with the submission of invoices relating to that agreement.

- 3.3 **Notice to Proceed.** The Company obtained from the Council a written conditional notice to proceed dated May 8, 2014 (the "Notice to Proceed") prior to incurring any costs to be reimbursed from the Grant. Any expenditure made prior to the date of the Notice to Proceed is made by the Grantee or the Company at its own risk and expense and is not eligible for payment with Grant funds.
- 3.4 **Engineering Costs.** Reimbursement of engineering costs for professional services will be capped at 10% of the total grant award amount. Requests that exceed 10% must have substantial justification and require prior approval by the Council to be reimbursable.
- 3.5 **Compliance with GCF Requirements.** The Grantee and the Company must comply with all applicable statutory, policy and regulatory guidelines of the state government and the Council governing the use of GCF funds.
- 3.6 **Funding Overruns.** The Company agrees that it will commit and provide monies from its own resources for cost overruns that are required to complete the Grant Project. This Agreement creates no obligation on the part of the Grantee, the Council or the State of South Carolina (the "State") to provide funds for the cost overruns.
- 3.7 **Use of Grant Funds.** The Company must complete the Grant Project within twenty-four (24) months of the date hereof. Completion is defined as the final documentation by the Grantee to the Council of Grant funds expended and issuance by the Council of a notification in writing of the closure of the Grant. The Council may grant extensions to this completion period requirement at its discretion, and such extensions shall not be unreasonably withheld.
- 4.0 **Project Start-Up.** The Project must begin within six months of the date hereof. Subject to the extensions provided in this Section 4.0, if the Company does not begin the Project within six months of the date hereof, the Council reserves the right to rescind the Grant and terminate this Agreement. For purposes of this section, the Project shall have begun once the Company has acquired the Project site in Chester County. Notwithstanding the foregoing, if the due diligence undertaken in connection with the purchase of the Project site reveals a condition on or affecting the Project site that cannot be resolved to the Company's satisfaction within six months of the date hereof and will delay the purchase beyond six months of the date hereof, such time period will automatically be extended an additional three months. Further time period extensions may also be requested by the Company and will be subject to approval by the Council, which will not be unreasonably withheld.
- 5.0 **Contractor Selection.** If the Company desires to select a private contractor to undertake all or any part of the scope of work of any portion of the Grant Project, then the selection

- 10.0 **Compliance.** The Council will review the hiring records and notify the Company in writing of its compliance or non-compliance with this Agreement. Upon written notification from the Council that both the Job Requirement and the Investment Requirement have been fulfilled and the Job Maintenance Period and the Investment Maintenance Period have each expired, this Agreement and all obligations of the Company, unless otherwise stated, hereunder shall terminate.
- 11.0 **Maintenance of Records.** The Company shall retain records for property purchased totally or partially with Grant funds for a period of three years after such purchase. The Company shall maintain records relating to procurement matters for the period of time prescribed by applicable procurement laws, regulations and guidelines, but no less than three years. All other pertinent Grant and Project records including financial records, supporting documents, and statistical records shall be retained for a minimum of three years after notification in writing by the Council of the closure of the Grant. However, if any litigation, claim, or audit is initiated before the expiration of any such period, then records must be retained for three years after the litigation, claim, or audit is resolved.
- 12.0 **Repayment of Assistance.** Failure to satisfy and maintain the Job Requirement and the Investment Requirement as set forth herein may result in repayment of all or a portion of the Grant funds expended. The Company will make re-payments to the Grantee, who will immediately notify and reimburse the Council.
- 12.1 **Early Default.** If the Company does not locate in the State or otherwise fails to invest at least \$150,000,000 and create at least 300 new, full-time jobs in the State by December 31, 2020, then Company shall be required to tender to the Grantee an amount equal to the amount of all Grant funds expended as of such date.
- 12.2 **Achievement Period Requirements.** On or before the expiration of the Investment Achievement Period, the investment by the Company both at the Project and otherwise within the State in connection with the Project shall not be less than the Investment Requirement, and on or before the expiration of the Job Achievement Period, the number of new, full-time jobs created by the Company both at the Project and otherwise within the State in connection with the Project shall not be less than 88% of the Job Requirement (the "Minimum Job Requirement"). If the Company does create jobs and/or make investment but fails to meet such requirements, the Company shall be required to repay a portion of the Grant funds expended, based on the actual number of jobs created and/or investment level achieved as of the last day of the Investment Achievement Period or the Job Achievement Period, as applicable. The repayment amount for failure to meet either the Investment Requirement or the Minimum Job Requirement will be calculated independently in accordance with the formulas provided below.
- 12.2.1 **Shortfall in Investment.** In the event that the Company fails to meet the Investment Requirement by the end of the Investment Achievement Period ("Investment Creation Default"), then, following written notice from the

Council, the Company shall repay a portion of the Grant funds expended in accordance with the Investment Shortfall Formula below:

- a. The "Investment Shortfall Formula" is equal to 25% of the Grant funds expended multiplied by Investment Shortfall Percentage.
- b. The "Investment Shortfall Percentage" is equal to 100% minus (the Company's Capital Investment (as defined below), divided by \$500,000,000).

"Company's Capital Investment" is defined as all capital investment (under the International Financial Reporting Standards or under the General Accepted Accounting Principles) made by the Company both (i) at the Project and (ii) otherwise within the State in connection with the Project and in infrastructure connected to the Project, but excluding all costs reimbursed to the Company through the Grant and any additional State grants. Any reference to capital investment shall be deemed a reference to the gross capital investment value at the time of acquisition or investment and shall not reflect any depreciation or write down of the book value. In the event that the Company, under either its internal policies or under the rules of the International Financial Reporting Standards, does not treat a cost(s) as a capital, but such cost(s) could be treated as capital under the Generally Accepted Accounting Principles, then such cost(s) shall qualify for the purposes of this Agreement as a capital investment.

12.2.2. **Shortfall in Job Creation.** In the event that the Company fails to meet the Minimum Job Requirement by the end of the Job Achievement Period ("Job Creation Default"), then, following written notice from the Council, the Company shall repay a portion of the Grant funds expended in accordance with the Job Shortfall Formula below.

- a. The "Job Shortfall Formula" is defined as 25% of the Grant funds expended multiplied by Job Shortfall Percentage.
- b. The "Job Shortfall Percentage" is 100% minus (the actual number of new, full-time jobs created by the Company in South Carolina, divided by the Minimum Job Requirement).

12.2.3 If required, repayments are due and payable by the applicable Due Date (as defined below) and should be submitted to the Grantee. The Grantee will immediately return all payments to the Council.

12.2.4 If the Company satisfies the Job Requirement and the Investment Requirement by the end of the Job Achievement Period or the Investment

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Achievement Period, as applicable, it shall not have any repayment obligations under this Section 12.2.

12.3 **Maintenance Period Requirements.** As of each and every Reporting Date (defined below), the Company's capital investment both at the Project and otherwise within the State in connection with the Project may not be less than the Investment Requirement, and the number of jobs retained by the Company both at the Project and otherwise within the State in connection with the Project may not be less than the Minimum Job Requirement. If the Company fails to maintain the Investment Requirement or the Minimum Job Requirement as of any of the Reporting Dates for any year of the Investment Maintenance Period or the Job Maintenance Period, as applicable, the Company will be required to repay a portion of the Grant funds expended in accordance with the formulas below. The Company's repayment obligation shall be calculated on each anniversary of the end of the Investment Achievement Period or the Job Achievement Period, as applicable (each a "Reporting Date") utilizing the monthly average for the immediately preceding 12 months of new, full-time jobs created and existing and the monthly average for the immediately preceding 12 months of investment maintained during the applicable year of the Investment Maintenance Period or the Job Maintenance Period, as applicable. For purposes of determining the monthly average, the Company may, after the end of the first year of the Investment Maintenance Period or the Job Maintenance Period, select a reasonable day, in its sole discretion, upon which such jobs and investment will be determined on a monthly basis. Thereafter, that day in the month shall apply for each applicable year for the remainder of such Maintenance Period. The pro-rata repayment obligation for failure to maintain the Minimum Job Requirement or the Investment Requirement during each year of the Investment Maintenance Period or the Job Maintenance Period, as applicable, will be calculated as follows:

- a. "Job Maintenance Shortfall Formula" shall be 5% of the Grant funds expended multiplied by Job Shortfall Percentage as of the Reporting Date, of the relevant year.
- b. "Job Shortfall Percentage" shall be 100% minus (the number of full time jobs existing (i) at the Project and (ii) otherwise within the State in connection with the Project as of the Reporting Date divided by the Minimum Job Requirement).
- c. "Investment Maintenance Shortfall Formula" shall be 5% of the Grant funds expended multiplied by Investment Maintenance Shortfall Percentage as of the Reporting Date, of the relevant year.
- d. "Investment Maintenance Shortfall Percentage" shall be 100% minus (the Company's Capital Investment remaining at the Project as of the Reporting Date (without any adjustment for depreciation or write downs), divided by the Investment Requirement).



- 12.3.1 If required, repayments are due and payable on the applicable Due Date and should be submitted to the Grantee. The Grantee will immediately return all payments to the Council.
- 12.4 "Due Date," shall be defined as the 90th day following the expiration of the 12 month cure period as set forth in section 12.5 below.
- 12.5 **Provisions for Cure.** In the event that the Company defaults in job creation or investment obligations thereby creating a Job Creation Default and/or an Investment Creation Default, and the Company has received notice that a repayment shall be required, then commencing upon the date of such notice, the Company shall have an additional twelve (12) month period to cure such shortfall in new, full-time jobs or investment (during which time, any requirement for repayment shall be held in abeyance) and the date for repayment shall be so extended. In the event that the Company then cures such shortfall (i.e. creates additional new, full-time jobs or makes additional capital investment equal to the amount of the shortfall) within the 12 month cure period, the Company shall be deemed to have met such Minimum Job Requirement or Investment Requirement and no repayment pursuant to such cured default shall be due or owing.
- 12.6 **Provisions for Repayments.** In the event that the Company fails to cure a job creation or investment shortfall for which it had notice and opportunity to cure, or the Company has received proper written notice that it has failed to maintain the jobs or investment, then the Company shall tender such amount of repayment by the Due Date, which shall be deemed to commence upon the expiration of the 12 month cure period. The Company shall only pay the actual amount as calculated pursuant to the terms hereof and no additional payments or interest shall be due in connection with any such repayment.
- 13.0 **Amendments.** If (a) the Investment Requirement is not met or (b) the total number of full time jobs created is less than the Minimum Job Requirement or (c) the investment is not made or the jobs are not created within the Investment Achievement Period or the Job Achievement Period, as applicable, the Company may provide detailed documentation that a good faith effort was made to achieve both the Minimum Job Requirement and the Investment Requirement. To the extent that extenuating circumstances prevent the Company from fulfilling its commitments contained herein, and the Grantee and the Council, in their sole discretion, acknowledge such circumstances in writing, this Agreement may be modified in writing by mutual agreement of the parties.
- 14.0 **Representations and Warranties.** The Company hereby makes the following representations and warranties and acknowledges and agrees that such representations and warranties have been material to the Council's decision to enter into this Agreement and further agrees that each representation and warranty is true, accurate and complete in all material respects as of the date hereof and will remain true and correct in all material respects throughout the term of this Agreement.

of that contractor by the Company must take place in accordance with the Chester County procurement ordinance.

- 6.0 **Investment Requirement.** The Company agrees to make and maintain, or cause to be made and maintained through an Affiliate (as defined below), capital investment of not less than Five Hundred Million and No/Dollars (\$500,000,000), above and beyond any reimbursement from the Grant or any additional State grants, for land, building and machinery and equipment at the Project (the "Investment Requirement") within a period beginning on May 8, 2014 and ending on the earlier of (i) December 31, 2024 or (ii) the date that the Company certifies to the Council that that it has satisfied the Investment Requirement (the "Investment Achievement Period"). The Company's investment may be verified at the request of the Grantee or the Council. For purposes of this Agreement, "Affiliate" means any corporation, partnership, or other entity that controls or is controlled by or is under common control at any level with the Company.
- 7.0 **Job Creation Requirement.** The Company agrees to create and maintain, or cause to be created and maintained through an Affiliate, no fewer than 1,700 new, full-time jobs at the Project and otherwise within the State (the "Job Requirement") within a period beginning on May 8, 2014 and ending on the earlier of (i) December 31, 2024 or (ii) the date that the Company certifies to the Council that that it has satisfied the Job Requirement (the "Job Achievement Period"). Notwithstanding the foregoing, for purposes of this Agreement, no employee of the Company or an Affiliate at a retail store will be counted towards the Job Requirement.
- 8.0 **Maintenance Periods; Terms.**
- 8.1 Once the Company has satisfied the Investment Requirement within the Investment Achievement Period, the Company agrees to maintain the Investment Requirement at the Project for a period beginning on the first date following the expiration of the Investment Achievement Period and ending on the fifth anniversary thereof (the "Investment Maintenance Period").
- 8.2 Once the Company has satisfied the Job Requirement within the Job Achievement Period, the Company agrees to maintain the Job Requirement at the Project for a period beginning on the first date following the expiration of the Job Achievement Period and ending on the fifth anniversary thereof (the "Job Maintenance Period").
- 9.0 **Access to Records.** The Company agrees to provide the Grantee and the Council reasonable access to its facilities to substantiate the employment and investment committed by this Agreement. This covenant shall continue until the Company is notified in writing by the Council that the Job Requirement and the Investment Requirement have each been met, the Investment Maintenance Period and the Job Maintenance Period have each expired, and funds have been expended and documented, or until repayment of the Assistance occurs in accordance with this Agreement.

52

- 14.1 **Good Standing.** The Company is duly organized, validly existing and in good standing under the laws of the jurisdiction in which it is organized, has the power and authority to own its property and to carry on its business in each jurisdiction in which it does business, and has registered for and is duly qualified to conduct business in, and is in good standing in, the State of South Carolina.
- 14.2 **Authority and Compliance.** The Company has full power and authority to execute and deliver this Agreement and to incur and perform the obligations provided herein. No consent or approval of any public authority or other third party is required as a condition to the validity of the Company's obligation under this Agreement, and the Company is in compliance with all laws and regulatory requirements to which it is subject.
- 14.3 **No Conflicting Agreement.** There is no charter, bylaw, stock provision, partnership agreement or other document pertaining to the organization, power or authority of the Company and no provision of any existing agreement, mortgage, deed of trust, indenture or contract binding on the Company or affecting the Company's property which would materially conflict with or in any way prevent the Company from executing, delivering, or carrying out the terms of this Agreement.
- 14.4 **Litigation.** To the best of the Company's knowledge, there is no proceeding involving the Company pending or threatened before any court or governmental authority, agency or arbitration authority which if adversely decided would materially affect the Company's ability to meet its obligations under this Agreement and conduct its operations at the Project.
- 14.5 **Compliance with Laws.** To the best of its knowledge, the Company is in material compliance with all federal, state and local laws, regulations and governmental requirements including, but not limited to, environmental laws and the applicable federal and state laws, executive orders and regulations concerning discrimination on the basis of race, color, religion, sex, national origin, familial status, or disability, applicable to its facility including without limitation the property, business operations, employees, and transactions thereof.
- 14.6 **Binding Agreement.** Each part of this Agreement is a legally valid and binding obligation of the Company, enforceable against the Company in accordance with its terms, except as may be limited by bankruptcy, insolvency or similar laws affecting creditors' rights. This Agreement has been signed by an authorized Company representative and such signature is recognized by the Company as legally binding.
- 15.0 **Indemnification.** The Company agrees to defend, indemnify, and hold the Council and the Grantee harmless from and against the costs of any litigation (including reasonable attorney's fees) arising from this Agreement or the Assistance provided by the Council to the Grantee for the direct or indirect benefit of the Company, except to the extent such litigation is caused by the negligence or willful misconduct of the Council or the Grantee;

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provided, however, that the Company's liability pursuant to this indemnification provision shall be limited by the provisions of the SC Tort Claims Act, Section 15-78-10 et seq. of the S.C. Code of Laws, 1976, as amended (the "Code"), to the extent those provisions provide full or limited immunity to governmental parties from third party claims and prohibit recovery of punitive or exemplary damages. In the event that any litigation is threatened or arises from this Agreement or the Assistance provided hereunder, then, to the extent that the Company is required to defend, indemnify or hold the Council or the Grantee harmless, such obligations of the Company shall be conditioned upon the Company's right to appear in such litigation and to select and direct the legal counsel engaged in the defense of the Council or the Grantee, as applicable. This provision shall survive the termination of this Agreement for any claim arising during the term of the Agreement.

- 16.0 **Assignability.** The terms of this Agreement may not be assigned to another entity without the written permission of the Grantee and the Council, which consent shall not be unreasonably withheld, except that the Company may assign this Agreement to an Affiliate without the prior written consent of the Grantee and the Council provided that the Company notifies the Grantee and the Council within thirty (30) days following such assignment. In such case, the Affiliate shall assume all of the Company's rights and responsibilities hereunder and the Company shall be fully released herefrom.
- 17.0 **Notification.** The Company must notify the Grantee and the Council if there are any changes in the status of the Company that will materially impact or alter the Company's ability to comply with this Agreement. All notices required or otherwise provided under this Agreement shall be deemed made upon mailing by first class mail, postage prepaid, and addressed to the other party as follows:

**Notices to the Council shall be sent to:**

Ms. Dale Culbreth  
Senior Program Manager, CCED Programs  
South Carolina Coordinating Council for Economic Development  
South Carolina Department of Commerce  
1201 Main Street, Suite 1600  
Columbia, SC 29201


**Notices to Grantee shall be sent to:**

Mr. R. Carlisle Roddey  
Supervisor  
Chester County  
Post Office Box 580  
Chester, South Carolina 29706


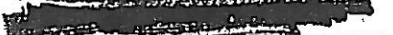

With a copy to:

Ms. Joan Elizabeth Winters  
Winters Law Firm  
105 Main Street  
Chester, South Carolina 29706

Notices to Company shall be sent to:

  
Giti Tire Holdings (USA), Ltd.  
c/o 10404 Sixth Street  
Rancho Cucamonga, CA 91730

With a copy to:

- 18.0 **Severability.** If any provision of this Agreement is or becomes illegal, invalid or unenforceable in any respect, the legality, validity and enforceability of the other provisions of this Agreement shall not in any way be affected or impaired thereby.
- 19.0 **Governing Law and Jurisdiction.** This Agreement is made under and shall be construed in accordance with the laws of the State, without regard to conflicts of laws principles. By executing this Agreement, the Company also agrees to submit to the jurisdiction of the courts of the State for all matters arising hereunder. In the event of a dispute, the Council shall have standing to represent the State.
- 20.0 **Freedom of Information.** The Company understands and agrees that (i) the Grantee and the Council are each a public body within the meaning of the South Carolina Freedom of Information Act, Title 30, Chapter 4 of the Code (the "FOIA Act"); (ii) the Grantee and the Council are each required to comply with the provisions of the FOIA Act by disclosing certain public records upon receipt of a written request; and (iii) after execution of this Agreement, this Agreement and all documents and other information incidental to this Agreement are subject to disclosure pursuant to Sections 30-4-40(a)(9) and 30-4-40(a)(5) of the Code upon request. The Grantee and the Council each agree to utilize applicable exemptions of FOIA Act located in Section 30-4-40 of the Code to the maximum extent authorized by law to protect confidential information related to this Agreement and the Project. If disclosure of this Agreement and related information is required, pursuant to Section 30-4-40(a)(5)(c) of the Code, the Council agrees to redact any information in this Agreement or any documents incidental thereto that is clearly marked by the Company as confidential and proprietary and has been provided to the Council for economic development or contract negotiation purposes. However, the Grantee, the Council, and their respective members, employees, and staff shall not be



liable for the inadvertent release of any information contained in the Agreement or any other documents related to the Project, absent gross negligence or willful misconduct.

To the extent an action at law or equity is brought to require the disclosure of any information related to the Project, the Council reserves the right to include the Company in such action and the Company hereby agrees to bear all costs associated with defending such action.

21.0 **Events of Default.** During the term of this Agreement, the following shall constitute events of default by the Company under this Agreement:

- 21.1 any representation or warranty made by the Company herein that is false or misleading in any material respect at the time made;
- 21.2 failure of the Company to comply with all applicable statutory, policy and regulatory guidelines of the state government and the Council governing the use of GCF funds and continuance of such failure for a period of 30 days after receipt by the Company of written notice from the Council specifying the nature of such failure and requesting that it be remedied; provided, however, that if, by reason of the nature of such failure, the same cannot be remedied within the said 30 days and the Company proceeds with reasonable diligence after receipt of the notice to cure the failure, the period may be extended upon the prior written consent of the Council;
- 21.3 failure of the Company to observe and perform any covenant, condition or agreement hereunder on its part to be performed and continuance of such failure for a period of 30 days after receipt by the Company of written notice from the Council specifying the nature of such failure and requesting that it be remedied; provided, however, that if, by reason of the nature of such failure, the same cannot be remedied within the said 30 days and the Company proceeds with reasonable diligence after receipt of the notice to cure the failure, the period may be extended upon the prior written consent of the Council;
- 21.4 the Company's consenting to the appointment of a receiver, trustee or liquidator of itself or of a substantial part of its property, or admitting in writing its inability to pay its debts generally as they come due, or making a general assignment for the benefit of creditors;
- 21.5 the Company's filing a voluntary petition in bankruptcy or a voluntary petition or an answer seeking reorganization in a proceeding under any United States bankruptcy laws (as now or hereafter in effect), or, by voluntary petition, answering or consenting, seeking relief under the provisions of any other now existing or future bankruptcy or other similar law providing for the reorganization or winding-up of corporations, or providing for an agreement, composition, extension or adjustment with its creditors;
- 21.6 the entry of an order, judgment, or decree in any proceeding by any court of competent jurisdiction appointing, without the consent of the Company, a

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receiver, trustee or liquidator of the Company or of any substantial part of its property, or sequestering any substantial part of its property, and any such order, judgment or decree of appointment or sequestration remaining in force undismissed, unstayed, or unvacated for a period of 180 days after the date of entry thereof; or

- 21.7 a petition against the Company in a proceeding under applicable United States bankruptcy laws or other United States insolvency laws as now or hereafter in effect is filed and a final, non-appealable order for relief is entered in connection therewith, or if, under the provisions of any law providing for reorganization or winding-up of corporations which may apply to the Company, any court of competent jurisdiction shall assume jurisdiction, custody or control of it or of any substantial part of its property and such jurisdiction, custody or control shall remain in force unrelinquished, unstayed or unterminated for a period of 180 days.
- 22.0 **Remedies.** If any such event of default shall occur and be continuing, then the Council shall, to the extent permitted by law and without notice of any kind to the Company (except to the extent required by law or as expressly required herein), seek to enforce the rights of the Council hereunder by exercising any or all of the following remedies:
- 22.1 Refrain from extending any further assistance or Grant funds until such time as the Company is in full compliance with the terms and conditions of this Agreement;
- 22.2 Require repayment of all or a portion of the funds expended under this Agreement;
- 22.3 Cancel, terminate or suspend this Agreement; or
- 22.4 Take such other reasonable action as may be necessary to protect its rights and interests hereunder.
- 23.0 **Additional Remedial Provisions.**
- 23.1 No remedy herein conferred or reserved to the Council is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof; nor shall any single or partial exercise of any right hereunder preclude any other or further exercise thereof or the exercise of any other right. A waiver of any particular breach or default under any provision hereof shall not operate as a waiver of any further or subsequent breach or default under such provision. The remedies herein provided are cumulative and not exclusive of any remedies provided by law, and any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Council to exercise any

52

remedy reserved to them in this Agreement, it shall not be necessary to give notice other than such notice as may be required in this Agreement.

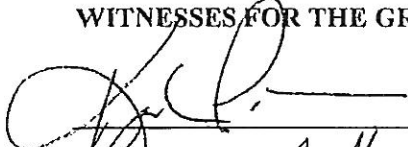
- 23.2 Neither the Grantee nor the Council shall be required to do any act whatsoever or exercise any diligence whatsoever to mitigate the damages to the Company if an event of default shall occur hereunder.
- 24.0 Counterparts. This Agreement may be executed in two or more counterparts each of which shall be deemed to be an original, but all of which shall constitute one and the same instrument.

[Signatures on following page]

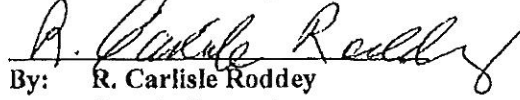
IN WITNESS WHEREOF, the parties have caused this Agreement to be fully executed by their authorized representative under seal to be effective as of the date first written above.

WITNESSES FOR THE GRANTEE:

GRANTEE:

  
R. Carlisle Roddey




CHESTER COUNTY, SOUTH CAROLINA

  
By: R. Carlisle Roddey  
County Supervisor

WITNESSES FOR THE COMPANY:

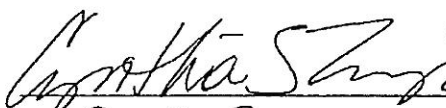
GITI TIRE HOLDINGS (USA) LTD.

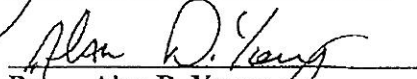


  
By:   
Its: 

WITNESSES FOR THE COUNCIL:

COORDINATING COUNCIL FOR  
ECONOMIC DEVELOPMENT

  
Judi Burman

  
By: Alan D. Young  
Executive Director

**FIRST AMENDMENT TO THE PERFORMANCE AGREEMENT  
(GOVERNOR'S CLOSING FUND ASSISTANCE)**

This **First Amendment to the Performance Agreement** (the "First Amendment") is made to be effective the 4<sup>th</sup> day of September, 2014 by and among Chester County, a political subdivision of the state of South Carolina and hereinafter referred to as the "Grantee", Giti Tire Holdings (USA), Ltd., hereinafter referred to as the "Company", and the South Carolina Coordinating Council for Economic Development, hereinafter referred to as the "Council";

**WITNESSETH**

That for and in consideration of the mutual covenants and agreements herein contained, the above parties do hereby agree as follows:

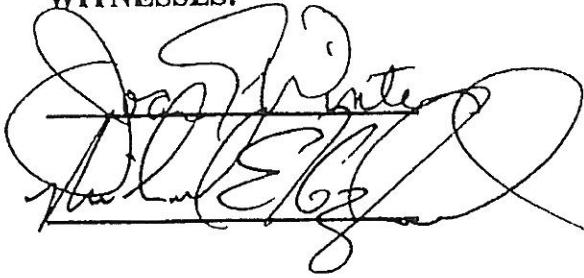
- 1.0 **First Amendment to Agreement.** The parties recognize that this First Amendment modifies and amends the Performance Agreement ("Agreement") made and entered into by the parties to be effective the 5<sup>th</sup> day of June, 2014. The terms of the Agreement that are not inconsistent with the terms contained herein shall remain in full force and effect, and any such terms that are not inconsistent shall be incorporated herein for all practical purposes.
- 2.0 On September 4, 2014, the Council awarded an additional Five Hundred Fifty Thousand and No/100 Dollars (\$550,000) in grant funds so that the total Grant amount set forth in Section 1.0 of the Agreement is hereby increased to a total amount of Thirty Six Million Three Hundred Twenty Five Thousand and No/100 Dollars (\$36,325,000).

*(Signature Page Follows)*



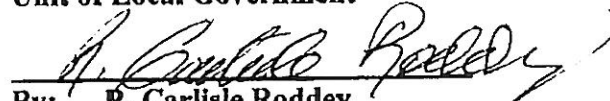
IN WITNESS WHEREOF, the Parties have caused this Agreement to be fully executed by their authorized representation under seal as of the date first written above.

WITNESSES:




GRANTEE:

Chester County  
Unit of Local Government

  
By: R. Carlisle Roddey  
Its: County Supervisor

WITNESSES:

  
John Bjorn

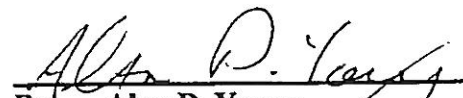
GITI TIRE HOLDINGS (USA) LTD.

  
By: Sylvia Soerijadi  
Its: Corporate Secretary

WITNESSES:

Dale M. Culbreth  
Marcella A. Lonest

COORDINATING COUNCIL FOR  
ECONOMIC DEVELOPMENT

  
By: Alan D. Young  
Its: Executive Director

IN WITNESS WHEREOF, the Parties have caused this Agreement to be fully executed by their authorized representation under seal as of the date first written above.

WITNESSES:

\_\_\_\_\_  
\_\_\_\_\_

GRANTEE:

Chester County  
Unit of Local Government

By: R. Carlisle Roddey  
Its: County Supervisor

WITNESSES:

\_\_\_\_\_  
*John Bjork*  
\_\_\_\_\_

GITI TIRE HOLDINGS (USA) LTD.

\_\_\_\_\_  
*[Signature]*  
\_\_\_\_\_

By: Sylvia Soerijadi  
Its: Corporate Secretary

WITNESSES:

*Dale M. Culbert*  
\_\_\_\_\_  
*Marcella A. Jones*  
\_\_\_\_\_

COORDINATING COUNCIL FOR  
ECONOMIC DEVELOPMENT

*Alan D. Young*  
\_\_\_\_\_  
\_\_\_\_\_

By: Alan D. Young  
Its: Executive Director